



ROCKY MOUNTAIN CORPORATION FOR PUBLIC BROADCASTING

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August 26, 2004

Marlene H. Dortch, Secretary
FCC
Washington DC 20554

Re: MB Docket 04-232:
NPRM: Retention by
Broadcasters of
Program Recordings

INFORMAL COMMENTS
IN RESPONSE TO THE PROPOSAL TO REQUIRE
BROADCASTERS TO RETAIN PROGRAM RECORDINGS

1. The Rocky Mountain Corporation for Public Broadcasting (RMCPB) respectfully files informal and timely comment on MB Docket No. 04-232.
2. RMCPB is a membership organization of public broadcasting stations and entities in the Rocky Mountain states, independent of the Corporation for Public Broadcasting and receiving no federal funding. Its purpose is to enhance development and operation of public broadcasting in the Rocky Mountain States—and increasingly to protect and ensure service to our rural areas and communities.

Since 1968 RMCPB has assisted Public Radio and PTV stations in the Rocky Mountain states in securing FCC authorization, and PTFP funding assistance, for stations, translators and interconnection facilities to extend service to the unserved and maintain existing service in our vast and thinly populated region. And we have endorsed and urged state and national policies and regulations conducive to that end.

We submit these comments reacting within the context of the special challenges of our unique region and the necessity for sustained and undiminished rural NCE public radio and PTV service in it.

3. To be frank, my first saddleback reaction to the NPRM proposed mandate to require broadcasters to retain recordings of their programming for 60-90 days was to reflect that had Orwell written a 21st Century sequel to his famous *1984* the NPRM might have been one of its chapters.
4. My second, to seek an equally imaginative and creative schema for analytical response and comment to it. What if, I wondered, we were to measure it by the same yardstick we use for broadcasters and broadcast stations—**the public interest, convenience and necessity**.
5. The Commission seeks “*comment on enhancing our enforcement processes through proposed program recording retention requirements for broadcast stations in order to improve the adjudication of complaints.*” (Sec.I.3.)

A modest intent indeed, particularly since “... *between 2000 and 2002 the Commission received 14,379 complaints covering 598 programs and denied or dismissed 169 complaints for the lack of a tape, transcript, or significant excerpts*” (fn. 8).

6. **Public (and other) interest(s)**

Public: Availability of mandated recordings would no doubt have “*improved the adjudication of*” the some 1.2% of complaints received.

FCC: The Commission’s interest would indeed be served, and its processes improved and simplified, by availability of definitive recordings of programming receiving complaints.

Station: But **station interest would just as clearly be ill served by the added burdens of mandated recording and retention of programming.**

RMCPB member Nevada Public Radio, licensee of non-commercial educational stations KNPR and KCNV in Las Vegas; KTPH, Tonopah; KLNK, Panaca and KWPR, Lund/Ely, objects “to the initial cost of purchasing either logging recorders or computer equipment to record 18 hours a day of program material across seven different program streams” and notes “(w)ith the advent of digital technology and the ability to offer two program streams per channel...retention becomes even more burdensome as more program material is offered using new technology.”

Nevada Public Radio also objects to “software and computer programming costs”, “costs of storage media over the proposed 60 to 90 day period of retention”, “to the increased technical burden of maintenance and upkeep of such additional required equipment” and “most strenuously to the administrative burden of assigning staff to monitor the recording equipment, keep a schedule of erasing out of date media and searching through the retained material to track down complaints.”

These costs will of course most severely burden our smaller stations in isolated remote and rural communities and areas (many owned and operated by tribal entities): The Hopi’s KUYI; The Navajo’s in Alamo and Pine Hill NM and Tuba City AZ; the Jicarilla

Apaches' in Dulce NM; the Zuni's in Zuni NM; community stations in Alamogordo, Farmington and Gallup NM; Lund/ Ely, Panaca and Tonopah NV and Moab UT.

However modest or minimal these costs may appear to NPRM advocates, **money and staff time and attention will inevitably be diverted from each station's primary role and function of program service to the public, and just as inevitably that service will be diminished.**

Hence, with station interest ill served and station service to the public diminished, FCC interest indeed served by simplification of complaint processing, and the public interest to a degree served by that improvement, the crucial factor is **that diminished station service to the public—particularly local program service—is antithetical to the public interest.**

7. **...convenience**

Largely a non-factor for the public but significant for the Commission, convenience—or rather its antithesis, *inconvenience*—is a **crucially important, indeed huge, factor for stations.**

Recording and retention on the scale proposed is a **massive undertaking** at the station level:

With only a single program stream, a station recording and retaining 16 hours per day will after 90 days have a total of 1440 hours in retention.

According to the NPRM (Appendix A.5 and A.6) there were (as of Dec. 31, 2003) 4,467 TV stations and 11,011 radio stations. After 90 days, **15,478 stations** would have a **mindboggling total of 22,288,320 hours in retention.**

According to FCC totals as of March 31, 2004, there were 4,482 TV stations and 13,476 radio stations. After 90 days, **17,958 stations** would have **an even more mindboggling total of 25,859,520 hours in retention.**

That figure is barebones—derived from only single program stream operation. With multi-stream capabilities in both radio and TV, the real total could—and would--increase exponentially.

Lastly, the “additional reporting or recordkeeping requirements on...stations” (Appendix A.7.) would be a proportionately significant part of this massive undertaking.

And the massive undertaking becomes a **massive inconvenience** and a **massive burden** our stations can ill afford or support.

8. **and necessity**

In 1923, Supreme Court Justice Louis Brandeis said, “he makers of our Constitution ...sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the *right to be let alone*...the most comprehensive of the rights of men...”

RMCPB suggests this precept might well be followed in principle by regulatory agencies, and we submit that additional rules should not be imposed on broadcast stations **absent clear and present necessity**.

The present NPRM fails to meet that test.

As we understand the excerpt from the Chairman’s March letter to the Hon. John D. Dingell (fn.8), it appears extant enforcement processes were ineffective in adjudication of only some 1.2% of complaints received.

By implication, we assume they were successful in the other 98.8%.

Where then is the **clear and present necessity** for enhancement?

9. Moreover, there is a **massive disproportion** between a problem involving 169 denied or dismissed complaints and a remedy penalizing all 17,958 radio and TV broadcast stations.
10. There may well be a case to be made for mandating retention of recorded programming by the minority of stations with a history of violations of the restrictions on obscene, indecent and profane broadcast programming.
11. **In sum, RMCPB opposes adoption of the NPRM as proposed because it unfairly and unreasonably burdens and penalizes all stations for the sins of a few, and further recommends and requests that the Commission seek other means of enhancing its enforcement processes.**

Respectfully submitted,

ROCKY MOUNTAIN CORPORATION FOR PUBLIC BROADCASTING

By E. W. Bundy /s/

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